

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IN RE: FACEBOOK, INC. CONSUMER
PRIVACY USER PROFILE LITIGATION,

This document relates to:

ALL ACTIONS

CASE NO. 3:18-MD-02843-VC-JSC

**STIPULATION AND ~~PROPOSED~~
SUPPLEMENTAL ORDER PURSUANT
TO FED. R. CIV. P. 53 APPOINTING
SPECIAL MASTER**

By and through their undersigned counsel, the parties hereby state as follows:

1. Whereas, on July 20, 2021, the Court issued an Order appointing Daniel Garrie of JAMS as a special discovery master in this case. Dkt. No. 708 (“Special Master Order”).
2. Whereas, the appointment of a special master pursuant to Fed. R. Civ. P. 53 “must state” certain facts regarding the appointment. Fed. R. Civ. P. 53(b)(2).
3. Whereas, the appointment of a special master is contingent on the filing of a declaration by the special master disclosing whether there is any ground for disqualification under 28 U.S.C. § 455.
4. Whereas, the parties have consulted with Mr. Garrie and each other regarding a supplemental special-master order and process that serves the needs of the case. *See* Fed. R. Civ. P. 53(b)(4).

THE PARTIES THEREFORE STIPULATE AND AGREE AS FOLLOWS:

1. The parties consent to the appointment of Daniel Garrie of JAMS as the special discovery master to assist the Court in the resolution of discovery disputes. Pursuant to Fed. R. Civ. P. 53(b)(1), the parties acknowledge that the Court gave notice and the opportunity to be heard regarding its intent to appoint Mr. Garrie as a special discovery master.
2. Pursuant to Fed. R. Civ. P. 53(b)(2)(A), the parties agree that: (A) the Special Master Order describes Mr. Garrie’s scope of authority as special discovery master; and (B) Mr. Garrie shall continue in his capacity as a discovery mediator, along with the Honorable Gail Andler.
3. Pursuant to Fed. R. Civ. P. 53(b)(2)(A), the parties agree that in his capacity as special discovery master, Mr. Garrie will have the authority to establish procedures for mediating, reaching impasse on, and the briefing and presentation of discovery disputes to him in

his capacity as special discovery master. The parties agree that they will comply with all procedures Mr. Garrie establishes in his capacity as special discovery master. The parties agree that they will not raise discovery disputes to the Court other than through the procedures Mr. Garrie establishes in his capacity as special discovery master.

4. Pursuant to Fed. R. Civ. P. 53(b)(2)(B), the parties agree that Mr. Garrie may (A) confer with the Court (Judge Chhabria and/or Judge Corley) *ex parte* subject to Mr. Garrie's and the Court's discretion; and (B) confer with the parties *ex parte* in his capacity as discovery mediator. Once Mr. Garrie or Judge Andler has informed the parties that the parties have reached impasse on a discovery issue, there shall be no further *ex parte* communications between any party and either Mr. Garrie or Judge Andler on that issue. Nothing in this provision shall limit *ex parte* communications between Mr. Garrie and Judge Andler.

5. Pursuant to Fed. R. Civ. P. 53(b)(2)(C), the parties agree that all submissions regarding a dispute that the parties provide to Mr. Garrie in his role as special master shall be preserved by the parties and by Mr. Garrie until he has completed his duties as special master in this action. Mr. Garrie shall file any final ruling on a discovery dispute to the docket in this action.

6. Pursuant to Fed. R. Civ. P. 53(b)(2)(D), the Special Master Order describes the time limits and process for appealing an order submitted by Mr. Garrie. If any portion of the appeal submission is filed under seal, the party requesting sealing may submit support for its sealing request in accordance with Civil Local Rule 79-5 within seven days. Pursuant to Fed. R. Civ. P. 53(f)(3) and (5), the parties stipulate, subject to the Court's approval, that the Court shall review Mr. Garrie's findings of fact for clear error, rulings on procedural matters for abuse of

discretion, and findings of law de novo. The parties further agree that this process satisfies Fed. R. Civ. P. 53(f)(1)-(2).

7. Mr. Garrie shall be bound by the Protective Order and all other orders entered in this action protecting confidential, sensitive, private, and privileged information. *See* Dkt. 122.

8. If a party submits privileged materials *in camera* to Mr. Garrie in connection with a privilege dispute, the parties agree that having done so will not operate to waive the party's claim of privilege.

9. All submissions to Mr. Garrie shall be treated confidentially unless and until they are submitted to the Court in connection with any appeal. If a party believes that any portion of its own submission to Mr. Garrie would require sealing if submitted to the Court, it shall so indicate on its submission to Mr. Garrie or no later than four days after submission. If a party believes any portion of a submission from the opposing party would require sealing if submitted to the Court, it shall inform the submitting party and Mr. Garrie no later than four days after receiving the submission.

10. Pursuant to Fed. R. Civ. P. 53(b)(2)(E), the Special Master Order describes the basis, terms, and procedure for fixing Mr. Garrie's compensation.

11. Pursuant to Fed. R. Civ. P. 53(b)(3), the parties attach hereto Mr. Garrie's affidavit disclosing that there are no grounds for disqualification under 28 U.S.C. § 455.

Dated: August 18, 2021

KELLER ROHRBACK LLP

By: /s/ Derek W. Loeser
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PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATE: August 25, 2021



United States District Judge Vince Chhabria